

Senate Bill 560
Testimony in Support
Date: March 31, 2015

Chair Roblan and Senate Committee on Education Members,

I support SB 560. I'm Susan Farmer, a licensed teacher, trained in special ed law, and I advocate for special ed children and parents. My credentials are listed:

- B.S. in Early Childhood Education 1976, Peabody/Vanderbilt University.
- Specialized 4-year Degree focusing solely on Birth through age 8
- Former kindergarten teacher (4 years)
- Currently Licensed in Oregon
- Past 10 years have specialized in early reading intervention, learning disabilities, specifically reading/dyslexia
- Privately tutor children with reading disabilities
- Formal training in Special Education Law
- Member of Council of Parent Attorneys and Advocates, a national advocate group
- Advocate for parents in the special education process for their children
- Parent of child with a learning disability

In 2004, Federal law adopted the 60 **calendar** day timeline, but it's voluntary. Yet, by 2007, Oregon was 1 of only FIVE states left which failed to adopt this timeline. 9 states have even shorter timelines, including Washington with **35** school days, or about 47 **calendar** days.

Special ed directors claim staff would be UNable to perform the appropriate student evaluations if 560 passes. Yet 45 other states can and do! One district claims an annual Million dollar cost increase just to get staff to do quicker evaluations. That makes no sense when the number of children being tested is not increasing! Yet, shorter timelines means quicker help,-- which is what SHOULD happen, to meet their needs.

Districts claim a critical staff shortage. Yet I know specialists who refuse to work in schools because the children are being denied sufficient services. Attracting qualified staff could require an improvement in serving the children.

I'm disturbed by testimony from directors saying they'll reduce and even remove services to special needs children if 560 passes. Please see testimony I referenced. Since these children have services prescribed, and listed on an IEP document, the only way to reduce such services is to alter the child's IEP to claim the child needs less services, so staff can do evaluations. These directors just wrote Exhibit #1 for any child whose services get reduced.

Online Testimony excerpts; [emphasis added]:

With a shortened timeline for assessment, a greater percentage of that time will be focused on assessment **rather than** provision of service, leaving students and districts with **reduced service time**. (Testimony: Winterscheid, NWRSD)

With the shortened time for assessment that is proposed in SB 560, their focus would be shifted into assessment mode **rather than** service mode, leaving students and districts **without access to required services**.... Additionally, the impacts on services to students, when hard to find specialists are focused on evaluations **rather than** service could further negatively impact our most vulnerable students. [Testimony: Steiner, SSD]

We anticipate it would cost at least \$1,300,000 per year to allocate sufficient staff to complete evaluations under the proposed shorter timelines or ultimately **reduced instructional time** for our most [sic] vulnerable students so staff can meet their new assessment obligations. [Testimony: Sheldrake, BSD]

A shortened timeline will not increase the number of students needing evaluations. And statements claiming to withdraw legally-required services to Oregon's children is egregious!

Surely the other 45 states, 9 of which have even shorter timelines, have not needed to increase their timelines even though the Federal law allows them to. It's time for Oregon to join the rest of the nation in providing quicker access to special education for its most vulnerable children.

60 school days is one THIRD of a school year and way too long for children to wait. Please support SB560!

I sincerely appreciate your time and attention.

The statistics I provided are documented in your copy of my testimony.

Now, if you would permit me, I would like to quickly suggest an amendment to this bill.

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Attachment 1.

State Timelines for an Initial Evaluation Under the IDEA, Compiled by Felicia Hurewitz, Ph.D. and COPAA member (April 2007).

www.schoolmentalhealth.org/Resources/StateTimelinesIDEA.pdf on 3/31/2015.

Attachment 2. Pennsylvania's Regulation regarding handling when a parent orally requests their child be tested.

State Timelines for an Initial Evaluation Under the IDEA

Compiled by Felicia Hurewitz, Ph.D. and COPAA member (April 2007).

Boxed states are those with a timeline less than 60 calendar days.

state	timeline	notes
Alabama	60 calendar days	same in proposed regulations 290-8-9.02(1)(b)
Alaska	45 school days to evaluate and develop an IEP	
Arizona	60 calendar days	
Arkansas	60 calendar days	
California	60 calendar days except does not include vacations of 5 days or more	
Colorado	45 school days 60 calendar days	same in proposed regulations
Connecticut	45 school days	proposed regulations: 60 calendar days
Delaware	lesser of 45 school days or 90 calendar days (from Delaware AMSES)	Delaware proposed regulations keep this provision the same 925-2.3
District of Columbia	120 calendar days to evaluate and place student	
Florida	60 school days	
Georgia	60 calendar days	proposed new regulations keep this timeline, with the following rationale, "In the 2005-2006 school year, 85 % of the evaluations were completed within the 60 day timeline. To extend that timeline to more days or from calendar to school days, would delay getting services to students who are struggling learners." (HAR) §8-56-32
Hawaii	60 calendar days	
Idaho	60 calendar days between consent & <u>implementation</u> of IEP, not including school holidays greater than 5 days	Idaho Special Education Interim Manual 2005: chapter 1(8)(E).
Illinois	60 calendar days	
Indiana	60 instructional days	
Iowa	60 calendar days	
Kansas	60 school days	

< 60 calendar days

< 60 calendar days

< 60
calendar
days

Kentucky	60 school days for evaluation and <u>implementation</u> of IEP	707 KAR 1:320 (proposed regulations keep this provision)
Louisiana	60 business days	
Maine	45 school days	
Maryland	60 calendar days from consent, 90 days from written referral, deadline whichever comes sooner	
Massachusetts	30 school days	603 CMR 28.04
Michigan	30 school days	(MARSE) R340.1721c(2)
Minnesota	30 school days	
Mississippi	60 calendar days	Proposed regulations: 60 calendar days excepting school holidays over 3 days long [Mississippi draft policies 2006 Regarding children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004 (IDEA 2004)]
Missouri	60 calendar days	same in proposed regulations
Montana	60 calendar days	
Nebraska	60 calendar days	
Nevada	45 school days	
New Hampshire	45 calendar days	from Parent referral to referral meeting — 15 calendar days.
New Jersey	IEP implemented within 90 calendar days of consent to eval.	N.J.A.C. 6A:14-3.4(e)
New Mexico	60 calendar days	
New York	60 calendar days [State performance plan 2005-2010: http://www.vesid.nysed.gov/specialed/spp/2007plan/childfind.htm]	Proposed: 60 school days from consent for eval. to implementation of IEP http://www.vesid.nysed.gov/specialed/idea/expressterms307.htm
North Carolina	45 calendar days	

North Dakota 60 calendar days

in 2005-2006, 88% of evaluations made 60 day deadline; 95% either made cut-off or had an 'approved' reason for delay in eval. North Dakota FFY 2005 – 2010 State Performance Plan for Special Education

< 60 calendar days

Ohio 60 calendar days

Oklahoma 60 calendar days

Oregon 60 school days

581-015-0072 (13)

Pennsylvania 60 school days

proposed: 60 school days

Rhode Island 45 school days

proposed 60 calendar days

South Carolina 45 calendar days

South Dakota 25 school days

S.D. State Performance Plan for Special Education

Tennessee ~~evaluate and implement IEP within 40 school days~~

~~Tennessee regulations 0520-1-9-.05~~

60 calendar days

Texas 60 calendar days

Utah 60 calendar days

Vermont 60 calendar days

Virginia 65 business days (from referral, not consent)

Washington 35 school days

WAC 392-172-104(2)(a)

West Virginia 60 calendar days

Wisconsin 60 calendar days

Wyoming 60 calendar days

Wyoming State performance plan www.k12.wy.us

§ 14.123. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.306 (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.301 (relating to initial evaluations), the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60-calendar days after the agency receives written parental consent for evaluation, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted.

(c) Parents may request an evaluation at any time, and the request must be in writing. The school entity shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the permission to evaluate form to the parents within 10-calendar days of the oral request.

(d) Copies of the evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.

Authority

The provisions of this § 14.123 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1372 and 26-2603-B).

Source

The provisions of this § 14.123 adopted June 8, 2001, effective June 9, 2001, 31 Pa.B. 3021; amended June 27, 2008, effective July 1, 2008, 38 Pa.B. 3575. Immediately preceding text appears at serial pages (293071) to (293072).

Notes of Decisions

Basis for Decision

The panel's award of compensatory education was premised on a separate and distinct basis from the issues raised before the Hearing officer, requiring remand for an evidentiary hearing and an adjudication on the issue of appropriateness of the multidisciplinary evaluation. *Mifflin County*

1

2 Senator Gelser and others in support of SB 560:

3 Thank you for proposing SB 560 decreasing the time for schools to complete special education
4 testing. As a parent and a special ed advocate, I've encountered a significant number of parents
5 from multiple school districts which come against STRONG resistance from schools when they
6 ask for the school to evaluate their children. This as an opportune time to amend the ORS to
7 provide increased student/parent rights because of the following major parental struggles:

8 1. When parents ask the teacher or principal for testing, staff often say, "Your child
9 wouldn't qualify... he's not far enough behind, etc. He has to be 2-3 years behind before
10 he can get tested." This is a state-wide problem of countless parents. It's also a huge
11 compliance issue, amounting to biased "pre-determination" of the school's decision that
12 the child will not be found eligible.

13 Legally, eligibility can't be done without a full evaluation and an eligibility meeting
14 which includes the parent. Yet schools "pre-determine" all the time, without providing
15 the safeguard of the statutory written refusal to test. Parents don't know what to do
16 when the school says it can't/won't test. Parents assume the school is following the law
17 by saying no. Instead the school is out of compliance for not identifying a disability.

18 2. The staff also don't bother to inform the parent of the need for the parent's written
19 consent for evaluations, which would generate the 60-day timeline countdown. Kids are
20 being denied evaluations for months and even years this way. I have been told this
21 directly by numerous parents.

22 3. When the district finally holds a meeting and obtains the necessary signed consent, the
23 parent is now told their child's testing will be delayed another 60 days because the parent
24 just now signed the consent – a consent which the parent would have gladly given
25 months or years previously.

26 4. – OR – what also frequently happens, is the staff tells the parent they need/want to do
27 some interventions on the child prior to testing, and the staff spends the rest of the
28 meeting explaining all then coercing the parent to believing this is needed and if those
29 interventions don't work, then they can test. Staff never tells the parent that a simple
30 written consent will generate a 60-day deadline.

31 I propose strict, yet easy timelines and procedures for how a school handles a parent's
32 request/inquiry (verbal or written) about testing. Such requesting is not the same as "consent."
33 Response timelines aren't discussed in the federal or state regs because the feds and state
34 assumes schools are doing it right and not delaying evaluations. However, instead, parent
35 requests are falling on deaf ears... over and over again, except in places like California which
36 has multiple timeline requirements for various implementations of the law.

37 This practice needs to stop!

38 Please consider the following amendments at this opportune time of changing the evaluation
39 timeline.

40 ADDITIONAL INFORMATION REGARDING THE PROPOSED AMENDMENTS, AND
41 THE REASONS WHY THEY ARE CRITICAL, ARE ATTACHED AT THE END.

42 Change the proposed (5) in Section 1 of SB 560 to (6), and insert this as the proposed (5):

43 **SB 560, Line 22: Insert,** as a separate (c) or (e) to the current ORS 343.146 (5):

44 (c) or (e) Within 10 calendar days of a parent’s verbal or written request/inquiry for an initial
45 evaluation or reevaluation, made to a district administrator or teaching staff, the district
46 must:

47 (A) Inform the parent a formal **written** consent is required to initiate testing, and that a
48 staff person will schedule a meeting as soon as possible to discuss the procedure.

49 (B) Confirm a future meeting date, [see line 53] of mutual agreement, in which the parent
50 and relevant district staff will discuss the parent’s requested testing, and give opportunity
51 for written consent, or

52 (C) Provide a written Prior Notice of Refusal to evaluate pursuant to ORS 343.159(1).

53 (d or f) Within 21 calendar days of a parent’s verbal or written request/inquiry for an initial
54 evaluation or reevaluation, the district must conduct a meeting, per Section 1(c?) (B), [see
55 line 48] to discuss the parent’s requested evaluation and:

56 (A) Obtain written consent from the parent for the requested evaluation, and/or

57 (B) Provide a Prior Notice of Refusal for any portion(s) of the parent’s requested
58 evaluation or reevaluation not already refused under Section 1(5)(c)(C), [see line 52]
59 or

60 (C) Obtain a signed withdrawal of request from the parent which states:

61 (i) The parent is withdrawing the request for evaluation and is refusing to provide
62 written consent at this time

63 (ii) The specific reason for the withdrawal, unless the parent does not give a
64 reason

65 (iii) The parent understands the right to submit another request and consent at a
66 future date

67 (e) or (g) When a parent requests an evaluation under ORS 343.146, a district must ensure that
68 evaluations of children suspected of having a disability are not delayed or denied for the purpose
69 of obtaining data regarding the child’s response to scientific, research-based interventions (i.e.,
70 RTI) or any other form of interim intervention which the parents and/or district plans to
71 implement with the child. [THIS is a direct clarification order from the US Dept of Ed due to
72 districts delaying evaluations for this purpose and absolutely needs to be in the ORS!. See
73 attached Memo to State Directors
74

75 (f) or (h) Data regarding the child’s response to certain interventions not previously conducted
76 may be obtained during the interim time between the parent’s request for evaluation, and
77 the eligibility meeting, if such data is not previously begun.

78 (g) or (i) Districts may not extend the 21-day timeline allotted under (d), [see line 53] except for
79 reasons beyond control of the district.
80
81

82 [ALTERNATIVELY..... LINES 66-78 above might also be stated as follows]:

83

84 (e) or (g) When a parent requests an evaluation under ORS 343.146, a district must not:

85

86 (A) Delay obtaining written consent from the parent beyond the 21 days allotted in (d),[see
87 line 53] except for reasons beyond control of the district.

88

89 (B) Delay or interrupt the evaluation timeline for the purpose of obtaining data regarding the
90 child's response to scientific, research-based interventions (i.e., RTI) or any other form
91 of interim intervention which the parents and/or school plans to implement with the
92 child.

93

94 (i.) Districts must ensure that evaluations of children suspected of having a disability are
95 not delayed or denied because of implementation of RTI or other intervention strategies.

96

97 (ii.) Any data regarding the child's response to certain interventions may be obtained
98 during the interim time between the parent's request for evaluation, and the eligibility
99 meeting.

100

101

102 ADDITIONAL INFORMATION REGARDING THE PROPOSED AMENDMENTS AND
103 THE REASONS FOR THEM ARE ATTACHED.

104

105 Please do not hesitate to contact me so I can explain further the importance of these amendments
106 which are timely to include with SB 560.

107 Susan Farmer

108 503-585-9407

Please understand that CONSENT to an evaluation is usually not the same thing as a parent's REQUEST or INQUIRY of the parent asking about testing the district can perform on the child. Under both Federal regulations and OAR 581-015-2000 (5)(5), "consent" is legally defined as:

"Consent" means that:

(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and

(c) The parent or adult student understands that the granting of consent is voluntary and may be revoked at any time in accordance with OAR 581-015-2090(4) or 581-015-2735.

Therefore, schools simply ignore parent "requests" to test their child.

Schools also are notorious for holding a meeting to discuss testing, and then talking the parent out of testing by promising "interventions" or accommodations to help the child succeed, and which rarely make any difference. Or schools simply tell parents they **MUST** attempt to provide interventions prior to evaluating. This is a misinterpretation of the regulation which says the school needs data regarding attempts to provide interventions.

In fact, schools have been put on notice for weeks and months prior to the parent's final written consent, because the parents will likely have voiced concerns about their child's progress long before they ask for testing. Schools have plenty of opportunity to get this data if they want or need it. The US Dept. of Ed has recently (4 years ago) provided strict instruction to schools, saying they are NOT ALLOWED to delay a child's evaluation in order to conduct these interventions. See the pages following:



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>

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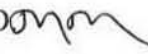
Contact Persons:

Name: Ruth Ryder
Telephone: 202-245-7513
Name: Deborah Morrow
Telephone: 202-245-7456

OSEP 11-07

MEMORANDUM

TO: State Directors of Special Education

FROM: Melody Musgrove, Ed.D. 
Director
Office of Special Education Programs

SUBJECT: A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)

The provisions related to child find in section 612(a)(3) of the Individuals with Disabilities Education Act (IDEA), require that a State have in effect policies and procedures to ensure that the State identifies, locates and evaluates all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification. It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability. States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.

A multi-tiered instructional framework, often referred to as RTI, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities,

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and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. With a multi-tiered instructional framework, schools identify students at-risk for poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student's responsiveness.

While the Department of Education does not subscribe to a particular RTI framework, the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction. OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. Many LEAs have implemented successful RTI strategies, thus ensuring that children who do not respond to interventions and are potentially eligible for special education and related services are referred for evaluation; and those children who simply need intense short-term interventions are provided those interventions.

The regulations implementing the 2004 Amendments to the IDEA include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research-based intervention¹. See 34 CFR §300.307(a)(2). OSEP continues to receive questions regarding the relationship of RTI to the evaluation provisions of the regulations. In particular, OSEP has heard that some LEAs may be using RTI to delay or deny a timely initial evaluation to determine if a child is a child with a disability and, therefore, eligible for special education and related services pursuant to an individualized education program.

Under 34 CFR §300.307, a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR §300.8(c)(10). In addition, the criteria adopted by the State: (1) must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD; (2) must permit the use of a process based on the child's response to scientific, research-based intervention; and (3) may permit the use of other alternative research-based procedures for determining whether a child has an SLD. Although the regulations specifically address using the process based on the child's response to scientific, research-based interventions (i.e., RTI) for determining if a child has an SLD, information obtained through RTI strategies may also be used as a component of evaluations for children suspected of having other disabilities, if appropriate.

The regulations at 34 CFR §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-

¹ The Department has provided guidance regarding the use of RTI in the identification of specific learning disabilities in its letters to: Zirkel - 3-6-07, 8-15-07, 4-8-08, and 12-11-08; Clarke - 5-28-08; and Copenhaver - 10-19-07. Guidance related to the use of RTI for children ages 3 through 5 was provided in the letter to Brekken - 6-2-10. These letters can be found at <http://www2.ed.gov/policy/speced/guid/idea/index.html>.

300.311, to a child suspected of having a disability under 34 CFR §300.8. If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. The LEA must provide the parent with notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation. Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006). An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c).

If, however, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR §300.503(a) and (b). The parent can challenge this decision by requesting a due process hearing under 34 CFR §300.507 or filing a State complaint under 34 CFR §300.153 to resolve the dispute regarding the child's need for an evaluation. It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.

We hope this information is helpful in clarifying the relationship between RTI and evaluations pursuant to the IDEA. Please examine the procedures and practices in your State to ensure that any LEA implementing RTI strategies is appropriately using RTI, and that the use of RTI is not delaying or denying timely initial evaluations to children suspected of having a disability. If you have further questions, please do not hesitate to contact me or Ruth Ryder at 202-245-7513.

References:

Questions and Answers on RTI and Coordinated Early Intervening Services (CEIS), January 2007

Letter to Brekken, 6-2-2010

Letter to Clarke, 4-28-08

Letter to Copenhaver, 10-19-07

Letters to Zirkel, 3-6-07, 8-15-07, 4-8-08 and 12-11-08

cc: Chief State School Officers
Regional Resource Centers
Parent Training Centers
Protection and Advocacy Agencies
Section 619 Coordinators